

# CASE AND COMMENT



Vol. 16

DECEMBER, 1909

No. 7

## *Compulsory Exercise of Elective Franchises.*

The intention has been announced of introducing, at the next session of the New York legislature, a bill looking toward making the exercise of the elective franchise compulsory; and the proposed legislation is to include compulsory attendance at primaries. Some features of such a project have undoubted merit. It would be of untold advantage to the interests of the state if every citizen could be compelled to register his vote upon proposed amendments to the Constitution. One of the perils in the present form of government can be secured to a state Constitution, and indifference of the average voter to the question whether it shall be adopted or not. Case after case arises where amendments are made part of the fundamental law of the land by the vote of only a small fraction of the electors who vote for candidates for public office at the time the amendment is submitted. One of the latest examples is the adoption of the appropriation for the barge canal in New York state. That immense appropriation, with all the consequences which will grow out of it, was adopted by the vote of a relatively small part of the voters of the state, while the great mass of the citizens, though opposed to the project in theory, were too indifferent to take the trouble to cast their votes against it, and let it go by default on the vote of those who had some special interest in it. Any scheme which would prevent such results, and compel men to register their opinions upon proposed

amendments, would be a long step toward the correction of this evil. It might also be of advantage to compel the exercise of the elective franchise at the election proper. A universal expression of the will of the voters would certainly tend to bring a better class of candidates before the people, because there would be a larger element among the voters which would be governed in its action by the merit of the candidate rather than by mere consideration of party claims. The benefit in this direction from a compulsory statute would, however, be less apparent than in the former case, because the larger portion of the citizens exercise their elective franchise upon choice of officers, and a relatively small percentage remain away from the polls, so that the requirement of the attendance of this smaller portion would affect the final result only in exceptional cases.

The benefit of a provision for compulsory attendance at primary elections is not so clear. The trouble with the primary election is not that men are not compelled to attend, or do not do so voluntarily, but that they have no opportunity of exercising an independent choice when they do attend. Under the present method of effecting the nominations, one who presents himself at the primary is offered a ticket containing a list of convention delegates whose principles and intentions as to the candidates to be placed in nomination he has no opportunity to test. He finds that some one, he knows not who, has made up for him this

list of delegates whom he does not know, and the delegates will probably obey the commands of the unknown person responsible for them; so that, if the elector casts his vote for such list, he is merely placing the nominating power in the hands of the unknown, and is accomplishing nothing but the addition of one more vote to the indorsement of the self-constituted authority of that person. The mere piling up of votes under such conditions is of no avail to correct the evils of the present system, or to break the power of the bosses. The relief must come in another form. Most men would gladly attend a primary if they thought they would accomplish anything by so doing, but they abhor making themselves parties to a farce, and they are doing little more than that in attending a primary under present conditions. The real candidate must be more conspicuous, and it must be made easier for desirable men to offer themselves as candidates. If a list of men could be proposed to the voter from whom he could choose his candidate, so that there would be some real rivalry, and some inducement to see that the best man won, there would be little need for a law compelling attendance; but, in the absence of such conditions, a compulsory law would only tend to make a bad matter worse. The reform must be in matters preliminary to the primary. Any law which would compel self-respecting men to attend the present primary would arouse only contempt and antagonism. A compulsory law the effect of which would be simply to increase the motion of the present antiquated machinery which was devised for the perpetuation of the boss would tend more to the spectacular than to the substantial, and would better be omitted.

### *The Selden Patent.*

A new departure seems to have been taken in upholding the Selden patent on automobiles. The court says that no litigation closely resembling the case has been shown to it, and it cites no authority

for its holding, so that it seems that the court itself recognizes that it is treading new ground. The claim of the patent is for the "combination with a road locomotive provided with suitable running gear, including a propelling wheel and steering mechanism, of a liquid hydrocarbon gas engine of the compression type, comprising one or more power cylinders, a suitable liquid fuel receptacle, a power shaft connected with, and arranged to run faster than, the propelling wheel, an intermediate clutch or disconnecting device, and a suitable carriage body adapted to the conveyance of persons or goods, substantially as described." This, of course, is a mere claim for combination of several parts, all of which were old at the time, and it would seem that, if any patent for it could be sustained, then any application of power to the operation of any machine is subject to patent. In fact, although the claim is for a combination, when changed in form and reduced to its ultimate terms, it is merely a claim for the application of power in the shape of a gas engine to the running of a road vehicle. Such a claim has never been thought to be patentable. In fact, the court says, in referring to a machine manufactured by Rosenwald, that, even if it had been successful, he might, nevertheless, have found his patent invalid by American law, because each part of his vehicle was doing just what it had always done without any new "co-operative law," while his engine, in particular, was the same motor which, before it was applied to his brougham, had, perchance, driven a lathe, and might tomorrow do something else. On the face of Selden's claim, that is precisely what he did, and what would make his patent unsustainable. The court says that there is no denial that, in form, nothing but combination was claimed. But then comes the point of the decision, which seems to be in advance of the former law. The court says that Selden's combination cannot be taken apart and each element recognized as something that had done the same thing or series of things before. It then proceeds to show that he took the old Brayton engine and made some alterations in it. He built a plu-

ality of cylinders to minimize the necessity for a fly wheel; he produced an inclosed crank case, and used a small piston with a short stroke. By so doing, he devised and used an arrangement of Brayton's engine never before attempted,—one that Brayton himself never suggested, made, or patented, and without which the road vehicle was an impossibility. So that, in 1879, when Selden applied for his patent, there was not one gas engine, which, in its then form, could be made an element in a road wagon combination. The court further says Selden solved this difficulty, and such solution gave him the right to claim broadly the thing which was the leading element in his invention when used in his combination. But he did not claim it. What he had invented was an improvement on the gas engine, but there is nowhere in his claim any mention of such improvement. What he claims is the combination, and that alone; and, so far as appears from his papers, the elements of his combination were all old and well-known. There is no suggestion that he had made an improved engine, and sought a patent on that, and the question then arises whether one can invent a part of a combination, and then, without mentioning or claiming his invention, simply make it an element of his combination, treating it as an old device, and, when he secures a patent on his combination, shut others out of the use of the device which he has not claimed. Such does not seem to have been understood to be the law; and, from the fact that no precedents could be found, the holding that it can be done would seem to be a new departure in patent law. If the engine was in fact the old, well-known engine, the court itself, as above shown, says that the combination would be invalid. Does the fact that the engine was in fact new alter the case when Selden treats it as old, and makes no claim for it? Prima facie it would seem that, by reason of the fact that he abandoned his claim on it, so that it at once became public property, it would fall under the well-established rule which applies in any case of a mere application of power to the operation of machinery. From the opinion, the ques-

tion of the sufficiency of the claim to cover this invention does not seem to have been considered by counsel, but they seem to have confined their attention to the question of fact whether or not Selden had a practicable working model when his application was filed, and whether or not defendant's machines infringed the patent. It is understood that the case will be appealed, and the question of the possibility of excluding the public from the use of a new device by simply claiming it as part of a combination may be presented to the consideration of the appellate court. If the device can be covered in that way, an interesting question arises as to the scope of the patent. The adaptation of the gas engine used by Selden in his automobile is practically the same as that used in motor boats, aeroplanes, and for other purposes; and, if that is Selden's invention, the question arises, Can he recover royalty for the use of it in all ways in which it is now used?

### *Riparian Rights as Property.*

Any socialistic tendency on the part of our government or our courts by which, through some strict method of construing Constitution, statute, or common law, the property of the individual is appropriated to the benefit of the community at large without compensation, is to be deplored. Not only is it unjust and unfair, and, by the fact of its injustice and unfairness, does it create in the mind of the owner a spirit of rebellion and disloyalty to the government, but it is against the plainest intent of all the written Constitutions. When the Constitution provided that no man's property should be taken for public use without compensation, the intent was that no individual should be compelled to contribute any more than his proportionate share to an improvement for the common welfare. It was, of course, impossible to catalogue all the kinds of property which were to come within the protection of such provision, but that duty was left to the courts, with the understanding that they would interpret liberally in favor of the citizen, as against the public, so as to

equalize the burden, and protect the individual from excessive enforced contribution. When, therefore, the courts show a tendency to interpret strictly against the individual, and to make him bear an excessive burden, merely because his case is not provided for in terms by the Constitution, they are departing from the spirit of that instrument, and from the intent with which it was adopted. The term "property" includes not only the physical soil, with its trees, rocks, and water ways, but all the advantages growing out of its location and advantageous surroundings; and when the government destroys these surroundings, the burden of the loss should not be thrown upon the individual. When, therefore, a court reaches a conclusion, as it did in *Home for Aged Women v. Com.* (— L.R.A.[N.S.] —), that the commonwealth can, for public purposes, convert a strip of the water way in front of the property of a riparian owner into dry land, and thereby destroy all of his riparian rights without compensation, it is a matter for regret on the part of all who cherish the traditions of our country and entertain hopes for its future. In *Weems S. B. Co. v. People's Steamboat Co.* 214 U. S. 355, 53 L. ed. 1028, 29 Sup. Ct. Rep. 663, the court says: "A private wharf on a navigable stream is thus held to be property which cannot be destroyed or its value impaired, and it is property the exclusive use of which the owner can only be deprived in accordance with established law; and, if necessary that it or any part of it be taken for the public use, due compensation must be made." Moreover, the fact that riparian rights are property is conceded by the court in the *Home for Aged Women Case*, for it says that such rights cannot be destroyed by other individuals or private corporations without making compensation; but it defends the right of the commonwealth by the following course of reasoning: The right of the riparian owner "is that of members of the public, for whose benefit the property is held by the state, with such special advantages to their property in the use of these public rights as come from its contiguity. Their rights, to be used in

connection with their property, like the rights of other members of the public, are subject to the paramount right of control of the government for the public good, however the exercise of this right of control may affect the convenience of any individual." It would seem that just here the court misses the thread of its reasoning. It had established the fact of the right of the riparian owner to navigate the water way,—a right held in common with the public at large,—and that he had no right to damages in case this right was interfered with, but that his right of access and the right to have the water flow to his property was a private right, distinct from that of the public, for which, in case of injury by another citizen, he had a right of action; and then it utters the words above quoted, by which it ignores the private right which it had established in the riparian owner, and treats it as merely a specially advantageous situation for the exercise of a public right. It is submitted that the right of the riparian owner is more than that. It is, in every sense of the word, a property right; and when the Massachusetts Constitution provides that, whenever the public exigencies require that the property of an individual shall be appropriated to public uses, he shall receive a reasonable compensation therefor, it applies to such kinds of property as well as to the physical soil and rocks. By the use of the interpretation which the Massachusetts court employs in this case, it would be possible to deprive every individual of every kind of property owned by him, in every case in which the property was needed for public use. If a man's riparian rights are held subject to the right of the state to improve the water way in such a way as to destroy them, by parity of reasoning, a man's lot in a city is held subject to the right of the city to open a highway through it, or to place a public park upon it; and if, in the one case, no property right is interfered with, so none is interfered with in the other. In other words, the citizen has no property rights as against the operations of the government and the needs of the people, and the right of eminent domain does not simply empower the state to compel the citizen

to sell his property in case the public needs it, but vests the ultimate title to all the property in the state, so that the title of the citizen ceases as soon as the needs of the state arise. Carried to this extent, the doctrine is at once seen to be revolutionary; but, if sound in the first step, there is no point in the line at which its soundness terminates, and it becomes unsound when carried to its conclusion. The Constitution is in the language of the common people, and is to be interpreted in the light of their understanding. It would occur to a very few, if any, laymen, that the advantage of contiguity to navigable water is not a property right. That it is so regarded appears very conclusively from the records of the real estate market. Thousands of dollars are paid for just this advantage, on the understanding that the access to the water is an inherent quality of the property, which enters into a determination of its value just as fully as does the character of the soil, or any other physical characteristic; and when the court cannot see this, and permits the state to take this property by some course of reasoning which the citizen cannot understand, or some theory that such property is not property, and is therefore not protected by the clear provisions of the Constitution, it creates a distrust in his mind, and shakes his faith in the government to a degree which can never be offset by the mere saving which is thereby effected to the taxpayers. If the public require a property right of an individual for the public good, the courts should see that the Constitution is interpreted so as to give him the equivalent of what is taken from him, and not force him to contribute what, in many cases, is the full value of his property, to the general welfare, and thereby bear a burden out of all proportion to the just and equitable distribution of burdens which the framers of the Constitution tried so hard to preserve. The court, in making this ruling, follows a few modern cases, chiefly those of the Supreme Court of the United States; but it ignores principles of the common law as firmly imbedded in the foundations of our jurisprudence as they can be by a line of decisions running back to the year

books, or beyond, which have protected the rights of the riparian owner against every species of assault, except, possibly, those of a particularly aggressive line of English kings. It seems strange that the right of access is property for which compensation must be made in England, a country without a written Constitution, but that it can be destroyed without compensation under a Constitution which expressly states that property cannot be so taken. There is something wrong in reasoning which leads to such a result. The court likens the waterway to a highway. In many jurisdictions the highway cannot be taken away so as completely to destroy access to property without compensation; and the right of the riparian owner to the water way is stronger than that of the abutting owner to the highway. The highway was created by the state, and perhaps it might be argued that the state can therefore unmake what it had made; but the water way is the gift of nature, and the rights of the public to its use are no stronger than the rights of the owner of land on its bank to have the natural advantages due to his location remain. Both are equal; and if the public, in its might, compels the citizen to submit to an exercise of its right which will destroy the natural advantage of the individual, who is unable to protect himself, justice, as well as the Constitution, requires that it should make compensation to him for the loss thereby inflicted upon him.

***Purchaser's Liability on Assumption of Mortgage Where Grantor is not Liable.***

The doctrine that a purchaser of land, assuming a mortgage thereon, is personally liable to the mortgagee if his grantor is liable, seems to be thoroughly established in practically all jurisdictions in this country. Of course, there must be, as in all other contracts, a valid consideration passing from the grantor to the grantee, but, assuming that the agreement to pay the mortgage is one that the grantor may enforce as against the grantee, then the great weight of author-

ity is that the promise inures to the benefit of the mortgagee. The authorities upon this question may be divided into two general classes which refer the liability to one or the other of two distinct and well-defined principles. In some cases, the liability of the purchaser is based on the equitable doctrine of subrogation. In others, it is held that he is liable upon the broad principle that a promise of one person to another, for the benefit of a third person, may be enforced by the latter.

The first of these rules, which was the earliest in point of adoption, is based upon the general equitable principle that a creditor is entitled to the benefit of all collateral obligations which one standing in the place of a surety for the debt has taken for his security, although he has not relied upon them or even known of their existence; and this equitable principle, in turn, is based on the more general equitable doctrine of the inherent power of equity to avoid circuity of action. The mortgagee might sue the mortgagor, who, in turn, could recover from his purchaser on the assumption clause, and so on through the line of purchasers. Under the above doctrine, the mortgagee may bring his action directly against the party ultimately liable, and thus the intermediate actions will be avoided. Under this doctrine, as between the parties to the promise, the grantor is considered a surety and the purchaser the principal debtor, while the land is the primary fund out of which the debt is to be satisfied.

If the mortgagee has to rely upon this equitable doctrine of subrogation, it necessarily follows that he cannot enforce the purchaser's contract of assumption where the grantor is not liable, since this contract of assumption is considered only as an indemnity to the grantor in case he has to pay the debt. If he is not liable, then the indemnity falls. One of the leading cases upholding this view is *King v. Whiteley*, 10 Paige, 465, in which it was asserted that where the grantor is not liable, an assumption clause must be construed as a mere declaration that the property is conveyed subject to the mortgage mentioned. This same view is held in *Ward v. De Oca*, 120 Cal. 102, 52 Pac. 130; *Nelson v. Rogers*, 47 Minn. 103, 49

N. W. 526; *Norwood v. De Hart*, 30 N. J. Eq. 412; *Wise v. Fuller*, 29 N. J. Eq. 257; *Vrooman v. Turner*, 69 N. Y. 280, 25 Am. Rep. 195; *Young Men's Christian Assn. v. Croft*, 34 Or. 106, 75 Am. St. Rep. 568, 55 Pac. 439.

Later, the broad principle that a promise of one person to another, for the benefit of a third person, may be enforced by the latter, was adopted in many states, with various limitations. And where this rule has been adopted, the mortgagee can rely upon it for a recovery against a purchaser who has assumed the mortgage, and whose grantor is liable as well as upon the equitable doctrine of subrogation; although, in many jurisdictions, the liability of the purchaser is still referred to the earlier and better-established doctrine. But the principle that a third person may sue on a contract made for his benefit is not recognized to its broadest extent in all jurisdictions. One limitation important to this discussion, recognized in some jurisdictions, is that the third person can sue upon the contract only when there is some duty or obligation owing from the promisee to the third person, or when there is some privity between them. Where the purchaser's grantor is himself liable, the purchaser will be liable under this second doctrine, even if the limitation is recognized, for, in such a case, the grantor owes a duty or obligation to the mortgagee; but, this limitation will obviously prevent the application of the doctrine if the grantor is not liable, since, upon that hypothesis, the necessary element of an obligation from the promisee to the third person is lacking. This view is held and very clearly expressed in *Vrooman v. Turner*, 69 N. Y. 280, 25 Am. Rep. 195, where the grantor was not liable. It was claimed that the purchaser was liable under the rule in *Lawrence v. Fox*, 20 N. Y. 268, which asserted that a third person might sue on a promise made for his benefit, but the court pointed out that the doctrine was limited in that case, and said that there must be a legal right, founded upon an obligation of the promisee, in the third person, to adopt and claim the promise as made for his benefit.

In other jurisdictions, however, which

recognize the principle that a third person may sue on such a contract, this limitation of the principle is not recognized; or, at least, is not applied in the cases which involve the liability of a purchaser who assumes the mortgage, but whose grantor is not liable. This is the view upheld in *Enos v. Sanger*, 96 Wis. 150, 37 L.R.A. 862, 65 Am. St. Rep. 38, 70 N. W. 1069, in which the court said that all that is required to render the rule applicable is for the obligor, for a sufficient consideration to support the promise, to agree to do some act for the benefit of the third person. Among other cases asserting the rule are *Dean v. Walker*, 107 Ill. 540, 47 Am. Rep. 467; *Merriman v. Moore*, 90 Pa. 78; *Hare v. Murphy*, 45 Neb. 809, 29 L.R.A. 851, 64 N. W. 211; *McKay v. Ward*, 20 Utah, 149, 46 L.R.A.

623, 57 Pac. 1024; *Marble Sav. Bank v. Mesarvey*, 101 Iowa, 285, 70 N. W. 198.

It thus appears that where the grantor is not liable, the mortgagee cannot enforce the promise of the purchaser to pay the debt, if he has to rely upon the equitable doctrine of subrogation; nor will the doctrine that a third person may enforce a promise made for his benefit help him, if, in that jurisdiction, the limitation of that doctrine, that there must be some duty or obligation owing from the promisee to the third person, is recognized; and it is only in those jurisdictions in which the latter doctrine is recognized in its broadest terms, and no duty or obligation from the promisee to the third person is necessary, that the mortgagee may recover on the purchaser's contract of assumption if the grantor is not liable.

## AMONG THE NEW DECISIONS

*Intermarriage of debtor and creditor.* Since, under the common law, when a man and woman entered into the marriage contract, the legal existence of the wife was merged in that of the husband, her property becoming his absolutely, and he becoming liable for her debts, it has been generally held, as shown by a note in 21 L.R.A. (N.S.) 683, that a debt owed by either husband or wife to the other at the time of the marriage merged in and was canceled by virtue of the new relation. But, under statutes which free married women from the former disabilities of coverture, relieve husbands from its liabilities, and allow them to contract together as if single, the courts very generally hold that marriage does not cancel a debt existing between the parties at the time the marriage was contracted. Thus, in the recent Massachusetts case of *MacKeown v. Lacey*, which accompanies the note, it is held that notes made by a man to his intended wife, as security for a loan, may be enforced against his estate, notwithstanding their continued validity is not

recognized by payment of interest after the marriage.

*Abandonment of contract because of failure of other party to perform within time designated.* In accordance with the well-settled rule that the breach of an independent covenant which does

not go to the whole consideration of the contract, and is subordinate and incidental to its main purpose, does not entitle the injured party to rescind, the courts agree in holding that, where time is not expressly or by implication of the essence of the contract, the failure or inability of one party to perform within the time designated gives the other no right to rescind or abandon the contract, since such a breach does not defeat the object of the parties. The remedy of the injured party in such case is held to be an action for the damages sustained by the delay in performance. In harmony with this general rule, it is held, in *Holt v. United Security L. Ins. & T. Co.* (N. J.) 72 Atl. 301, 21 L.R.A. (N.S.) 691, that where, before the time for perform-

ance, it appears that one party will not be able to perform his agreement upon the precise date stipulated, the other party may not repudiate his obligation in advance unless time is of the essence of the agreement. The other authorities on this subject are reviewed in a note to this case in L.R.A.

*Status of holder of "voting trust" certificates.* While cases are not lacking as to the validity and direct effect of "voting trust agreements," there seems to be no other case directly in point upon the question decided in *O'Grady v. United States Independent Teleph. Co.* (N. J.) 71 Atl. 1040, 21 L.R.A.(N.S.) 732, as to the status of the holder of "voting trust" certificates as a stockholder for purposes other than voting the stock. In this case it is held that the holder of such a certificate is the beneficial owner of the stock represented by it in the hands of the "voting trustees," and that, being such beneficial owner, he is a stockholder within the meaning of the New Jersey corporation act, and is entitled to institute the proceedings provided by that law for the winding up of an insolvent corporation.

*Right of action for malicious attachment as assets passing to trustee in bankruptcy.* The first decision under the bankruptcy act of 1898 on the question whether a right of action for malicious attachment of property passes to the trustee in bankruptcy appears to be that of *Hansen Mercantile Co. v. Wyman, P. & Co.* 105 Minn. 491, 117 N. W. 926, 21 L.R.A.(N.S.) 727, holding that malicious attachment of corporate property is not a personal tort, but gives rise to a cause of action for injury to property, which passes to the trustee in bankruptcy of the corporation. But it is to be noted that such holding is not conclusive of the question whether a cause of action for malicious attachment, arising in favor of an individual, will pass to his trustee. While it may be argued with some show of plausibility that the whole substance of such a right of action in favor of a corporation or

partnership is the injury to its property, the view that, in the case of an individual, the essence of the cause of action is the personal injury, the injury to his property being merely incidental thereto, has received judicial support, as shown by the authorities collated in a note to the L.R.A. report of the Minnesota case.

*Regulation of signs and billboards.* The power of a municipality to regulate signs and billboards is the subject of a note in 21 L.R.A.(N.S.) 735, accompanying the recent New York case of *People ex rel. M. Wineburgh Advertising Co. v. Murphy*, in which it is held that the police power of a municipality does not authorize it to limit the height of advertising signs erected over structures on private property, where such limitation is not necessary to the safety of the public, and is not applicable to structures of other kinds. So, in the California case of *Varney & Green v. Williams*, 100 Pac. 867, 21 L.R.A.(N.S.) 741, it is held that a municipal corporation is not empowered to forbid the maintenance of billboards within its limits merely because their appearance may be offensive to persons of refined taste, where the Constitution forbids the taking or damaging of private property for public use without compensation. But, in *Fifth Avenue Coach Co. v. New York*, 194 N. Y. 19, 86 N. E. 824, 21 L.R.A.(N.S.) 744, it is held that an ordinance prohibiting the use of advertising wagons on the streets of the city is not so arbitrary and unreasonable that the courts will interfere with its enforcement by a municipality which has charter authority to pass such ordinances as it may deem necessary and proper for the good government of the city and its inhabitants, and to regulate the exhibition of advertisements.

*Injuries by fire insurance patrol.* While the books full of cases as to the liability of a municipality for the negligence of its fire department, but very few cases, as shown by a note in 21 L.R.A.(N.S.) 810, seem to have passed upon the question of the liability of a fire insurance patrol for

negligent injuries. The main question in such case is whether such corporation is a public charity or a private corporation. The Pennsylvania courts have held that it is a public charity, while the Massachusetts courts have taken the ground that it is not. The holding of the latter courts has been followed with approval in the recent Louisiana case of *Coleman v. Fire Insurance Patrol*, accompanying the note, in which the fire insurance patrol was held liable for personal injuries to one of the officers of the regular fire department as the result of a collision between the fire truck and the insurance patrol wagon.

*Forbidding attorney to solicit business.* The constitutionality of a statute prohibiting an attorney at law from soliciting business seems to have been passed upon for the first time in the case of *State ex rel. Mackintosh v. Rossman* (Wash.) 101 Pac. 357, 21 L.R.A.(N.S.) 821, in which it is held that the constitutional rights of an attorney to liberty and the pursuit of happiness are not interfered with by a statute forbidding him to solicit business, either personally or through a solicitor.

*Vendor's breach of covenant to make improvements.* There is a surprising lack of authority on the question of the right of a vendee to rescind an executory contract for the sale of land because of the vendor's breach of a covenant to make improvements. But there would seem to be little doubt that breach of a covenant in a land contract for the improvement of the property which was the subject of the contract presents, at most, a question of damages for which compensation could be awarded, and that such a breach is not a sufficient ground for the rescission of the agreement. The few cases which have considered the question are reviewed in a note in 21 L.R.A.(N.S.) 823, accompanying the Washington case of *Crampton v. McLaughlin Realty Co.*, in which it is held that a vendee cannot rescind a contract because of the vendor's breach of his covenant to lay sidewalks and pavements and put in water mains

and sewers, where such covenant is one of several relating to building restrictions, the uses of the property, the establishment of grades, the location of water mains and sewers, and the right to acquire title from the state to land under water, since the covenants are independent, and the only remedy for their breach is an action for damages.

*Grant of monopoly by a municipality.* A review of the numerous authorities on the

question of the power of a municipal corporation to grant an exclusive right or create a monopoly for the removal of substances inimical to health leads to the conclusion that municipalities acting under those general charter provisions known as police powers, which embrace control of matters affecting the public health, may regulate the collection and disposal of those refuse substances which necessarily accumulate in every city. Certain of these accumulations, notably garbage, are of such character as to constitute nuisances noxious in themselves, and it has been generally held that the grant of an exclusive privilege to remove garbage is a valid exercise of the police power of a city, looking not only to the prevention of its accumulation, but to its sanitary removal and destruction. There are some exceptions to this general rule, as shown by a review of the cases in 21 L.R.A.(N.S.) 830; and in the recent Illinois case of *Landberg v. Chicago*, which accompanies the note, it is held that charter authority to do all acts and make all regulations which may be necessary for the promotion of health or the suppression of disease does not empower a municipality to provide for an exclusive grant to one person, upon his paying the amount bid therefor, of the right to collect and ship manure from the city.

*Disregard by jury of erroneous instructions.* The decisions upon the question of the right to reversal or new trial where the

jury disregard erroneous instructions are shown by a note in 21 L.R.A.(N.S.) 852, to be in conflict, though the weight of authority is in harmony with the holding in

*Lynch v. Snead Architectural Iron Works*, which accompanies the note, to the effect that the law as laid down by the court in its instructions, although erroneous, is the law referred to by a statute permitting a new trial in case the verdict is contrary to law.

*Liability of corporation for slander.* The authorities as to the liability of a corporation for slander by an agent or employee are not entirely in harmony, as shown by a note in 9 L.R.A.(N.S.) 929, and a supplemental note thereto in 21 L.R.A.(N.S.) 873, accompanying the recent South Carolina case of *Hypes v. Southern R. Co.*, in which it is held that a railroad company is answerable for slander uttered by its division superintendent while examining the time account of an engineer, which charges him with stealing from the company, since it is within the course and scope of his employment, and under the implied authority of the corporation.

*Suit club as lottery.* The limited number of authorities on the question hold without dissent that distribution of suits by a tailor among members of a club constitutes a lottery. These cases are collated in a note in 21 L.R.A.(N.S.) 876, accompanying the Texas case of *Grant v. State*, in which it is held, in harmony with the previous authorities, that a tailor is guilty of conducting a lottery where he organizes and conducts a suit club the members of which are to pay the price of a suit of clothes in weekly instalments, a suit being made up each week for that member of the club which shall be determined by lot drawn under the supervision of the members, each member being entitled to credit upon the clothing to the amount paid in by him, and the lucky ones having discretion to withdraw upon receiving their suits.

*Attempt to influence officers of court.* There seems to be no other case arising under a statute similar to that involved in the case of *State v. Johnson*, 77 Ohio St. 461, 83

N. E. 702, 21 L.R.A.(N.S.) 905, holding that one who addresses a communication to the judges of a court for the purpose of influencing their decision in a case pending therein, by disparaging one of the parties or the relator in a suit brought by the state, corruptly endeavors to influence the officers of the court in the discharge of their duties, within the meaning of a statute making such act an indictable offense. A note to the L.R.A. report of this case sets forth certain contempt cases in which the courts have held certain acts to constitute or not to constitute attempts to influence officers of the court, which, while not strictly in point upon the question decided in *State v. Johnson*, are somewhat analogous.

*Requiring carrier to maintain telephone.* The power of a corporation commission to require a railroad company to maintain a telephone to facilitate business is passed upon for the first time in the case of *Atchison, T. & S. F. R. Co. v. State (Okla.)* 21 L.R.A.(N.S.) 908, in which such power is sustained, the court holding that the telephone is an indispensable aid in the conduct of the business of a common carrier at any center of population.

*Review of merits on habeas corpus in extradition proceedings.* It seems to be the generally accepted rule, as shown by a review of the authorities in 21 L.R.A.(N.S.) 939, that an accused who is held in an asylum state upon an extradition warrant cannot be heard upon the merits of the charge made against him in the demanding state. The theory on which the act of Congress upon the subject of interstate rendition of fugitives was enacted and on which treaties with foreign countries therefor are made is that the place where the crime is committed is the proper place in which to try the person charged with having committed it, and the numerous cases upon the subject with practical unanimity recognize the reason and hold in accord with the rule as stated above. In harmony with this rule, it is held, in the Pennsylvania

case of *Com. ex rel. Flower v. Superintendent of County Prison* which accompanies the note, that one arrested in extradition proceedings as a fugitive from justice is entitled, in a habeas corpus proceeding to secure his release, to controvert only the jurisdictional facts, and that evidence that the charge against him was made on improper motives, and that he was not guilty of the crime charged, will not justify his release, where the proceedings are in exact compliance with the Constitution and laws of the United States.

*Right of vendee to recover excessive freight rates.* The question considered in the recent case of *State v. Central Vermont R. Co.* 81 Vt. 463, 71 Atl.

193, 21 L.R.A.(N.S.) 949, concerning the right of a purchaser to recover from a carrier the excessive freight rate exacted from his vendor, contrary to statute, and added by his vendor to the purchase price of the commodity, as a party aggrieved by the illegal exaction, within the meaning of a statute giving such person a right to sue to recover the excess, does not seem to have been previously before the courts. In this case the right of the purchaser to sue is denied. In the absence of statute, an action of this nature could hardly be maintained by a purchaser for the violation by a carrier of its common-law duty not to charge excessive rates, since the purchaser is not a party to the contract for transportation, and because of the indirectness of the loss sustained by him by reason of the enhanced purchase price.

*When partnership is bankrupt.* The recent decision of the United States circuit court of appeals, fifth circuit,—*Tumlin v. Bryan*, 165 Fed. 166, 21 L.R.A.(N.S.) 960,—that, to establish the insolvency of a partnership at the time of the payment of a debt, so as to enable the trustee to set aside the payment, the insolvency of its individual members must be established, seems to be without exact precedent, though a few analogous cases are cited in a note to the L.R.A. report of this case.

*Homicide by corporation.* So far as actual authority goes, the courts as yet have failed to

hold corporations amenable to punishment for homicide, as shown by a review of the authorities in 21 L.R.A.(N.S.) 998, appended to the New York case of *People v. Rochester R. & Light Co.*, holding that a corporation cannot be convicted of homicide under a statute defining that crime as the killing of one human being by the act, procurement, or omission of another. A few states give a remedy by indictment against corporations for negligently inflicting injuries resulting in death, but, as those statutes are designed merely to furnish a civil remedy in favor of the estate of the deceased, although in the form of a criminal action, the decisions are of little importance on the question of the corporation's liability for homicide. However, the tendency of the recent cases is to extend the doctrine of corporate civil liability for torts involving personal violence to criminal prosecutions. Of necessity, a corporation could not be indicted for a form of homicide, the only punishment for which is death or imprisonment, since a corporation cannot be subjected to such penalties; but, as to lesser degrees, at least, those not involving actual intent, for which the penalty prescribed is a fine or both fine and imprisonment, it would seem that, in view of the modern tendency of the courts, a conviction would be possible, provided the statute defining the crime was sufficiently broad to permit the inclusion of artificial persons.

*Failure of water company to supply water for fire purposes.* The right of a property owner to maintain an action against a water company for

failure to supply sufficient water for fire purposes, as required by its contract with the municipality, is the subject of a note in 23 L.R.A. 146. As there shown, the great weight of authority denies such right, and this doctrine is sustained by the majority of the recent cases, which are reviewed in a note in 21 L.R.A. (N.S.) 1021, accompanying the case of

*Hone v. Presque Isle Water Co.*, which holds that the fact that the compensation paid under a contract between a municipal corporation and a water company for water supply to extinguish fires is secured by taxation of the property holders does not give them a right to maintain an action against the company for loss of their property through its neglect to perform its contract. So, it is held, in *Anrum v. Camden Water, Light, & Ice Co.* (S. C.) 64 S. E. 151, 21 L.R.A. (N.S.) 1029, that a contract by a municipality, not in itself under obligation to furnish fire protection to its inhabitants, for a supply of water to be furnished by a water company for such protection, will not give a right of action to an individual injured by negligent failure to perform the contract, if the contract contains no express stipulation imposing such liability, and the compensation provided is not sufficient to recompense the company for such risk, while the contract itself provides that failure to perform its duties shall subject the water company to forfeiture of its franchise and to \$10 per month for each hydrant not kept supplied with water, although the court recognizes the right of the municipality to stipulate in its contract with the company that it shall be liable to individual citizens for loss inflicted upon them through its failure to comply with its contract. But, in *Woodbury v. Tampa Waterworks Co.* (Fla.) 49 So. 556, 21 L.R.A. (N.S.) 1034, the individual property owner's right of action for loss resulting from a breach of the company's contract is sustained where the contract is intended to be for the direct, immediate, and substantial benefit of the city and of its individual property owners, where the compensation for the water supply is furnished by individual property owners through a special property tax levy.

*Summary killing of hogs running at large.* The constitutionality of a statute permitting the summary killing of hogs found running at large on or near public levees seems to have been passed upon for the first time in *Ross v. Desha*

*Levee Board*, 83 Ark. 176, 103 S. W. 380, 21 L.R.A. (N.S.) 699, in which it is held that such a statute does not unconstitutionally deprive the owner of his property, where prevention of the weakening of the levees by the rooting of hogs is necessary to the public safety. While no other case passing upon the constitutionality of such a statute has been found, a few cases involving similar statutes, though not deciding their validity, are reviewed in a note to this case.

*Going upon platform or steps of car before reaching station.* The great weight of authority, as shown by a note in 21 L.R.A. (N.S.) 715, sup-

ports the proposition that, for a street car passenger to go upon the platform or step of the car for the purpose of alighting, after he has requested the conductor to stop the car, or the latter has signaled it to stop, and the speed of the car has begun to decrease, is not such negligence as will preclude a recovery for injuries sustained by being thrown from his position by some negligent act of those operating the car. Under such circumstances, it is held that the question of the passenger's negligence is for the jury. Thus, in a recent Iowa case—*Heinze v. Interurban R. Co.*—which accompanies the note, it is held that a street car passenger is not negligent *per se* because, after signaling for a stop, and the car has begun to slacken speed as his destination is approached, he takes a position on the step preparatory to alighting when the car stops, and the company was held to be negligent, where, after the signal for the stop had been given and the passenger was about to alight, the speed of the car was suddenly accelerated with unusual force and violence.

*Denying transaction with person since deceased.* The decisions on the question of the competency of a party to deny a transaction with a person since deceased are not in harmony, as shown by a review thereof in a note in 21 L.R.A. (N.S.) 755. The weight of authority appears to be against the decision reached in the

recent Alabama case of *Blount v. Blount*, accompanying the note, in which it is held that one is not precluded from testifying that he did not execute a deed to a person since deceased, a copy of which is found on record, in a suit to cancel the record, by a statute which provides that no person having a pecuniary interest in the result of the suit shall be allowed to testify against the opposite party as to any transactions with or statements by a deceased person whose estate is interested in the result of the suit, where it is not conceded or conclusively proved that he did in fact execute the deed or have a transaction with decedent.

*Injury to electric lineman.* The great weight of authority, as shown by a review of the decisions in a note in 21 L.R.A.(N.S.) 774, supports the conclusion reached in the recent Michigan case of *Lynch v. Saginaw Valley Traction Co.*, which accompanies the note, that a lineman of an electric railway company, who knows that the company depends for the inspection of poles upon the linemen, assumes the risk of that method of doing the work, and cannot hold the company liable for injury caused by the fall of a decayed pole upon which he was working, merely because it provided no independent method of inspection. Of course, if it is shown to be the custom and practice of the employer to make a special inspection of its poles, it will be responsible for the proper performance of such duty.

*Mortgage of after-acquired property.* The validity of a mortgage, other than a railroad mortgage, covering after-acquired realty, is considered in a note in 21 L.R.A.(N.S.) 843, in which it is stated that the doctrine applied in the recent North Carolina case of *Hickson Lumber Co. v. Gay Lumber Co.*, accompanying the note, that equity will give effect to a clause in the mortgage of a lumber company covering after-acquired property, real and personal, is generally recognized, the theory upon which courts of equity extend the lien of the mortgage to after-acquired property being that the mortgage, though inop-

erative as a conveyance, is operative as an executory agreement, which attaches to the property when acquired.

*Termination of contract of employment by death.* The question of the effect of the termination of a contract of em-

ployment by the death of one of the parties is the subject of an elaborate note, with a review of all the authorities, in 21 L.R.A.(N.S.) 914, accompanying the Washington case of *Mendenhall v. Davis*, in which it is held that one who has paid cash and notes for the implements and good will of another's business, and for his agreement to render, for a time, personal services in the business, which forms a large part of the consideration on his part, may, in case the rendition of the services is prevented by the latter's death, counterclaim against his liability on the notes the damages which he has suffered by failure to receive the service, although the death terminated the contract to render them.

*Liability of principal on negotiable paper executed by agent.* On the question of the liability of a principal on negotiable paper executed by an agent,

which is the subject of an exhaustive note in 21 L.R.A.(N.S.) 1046, the general rule is that, in order to bind the principal on such an instrument, it must in some way appear from the instrument that the contract is the contract of the principal. This rule is followed in the case to which the note is appended,—*New York L. Ins. Co. v. Martindale*,—where it is held that a person whose name does not appear upon a promissory note cannot be charged as an indorser thereof by parol proof that the nominal payee, in accepting and indorsing it, was acting as his authorized agent, where nothing upon the face of the note suggests the existence of an agency. But, in *Coaling Coal & Coke Co. v. Howard*, 130 Ga. 807, 61 S. E. 987, 21 L.R.A.(N.S.) 1051, it is held that, where a corporation owning realty sells it through A, its president, to B, and notes for the purchase money are signed "B, trustee," which are payable

to "A, president," and the latter, in the name and behalf of the corporation, makes a deed of the property to "B' trustee," who, without the knowledge of the corporation makes the purchase for himself and others, and the possession, use, and benefit of the property goes to those

for whom he thus purchases, the notes not being under seal, though negotiable, the corporation may maintain a suit outside of the notes, on the original consideration for the purchase price against B and the undisclosed principals for whom he acted in making the purchase.

## INTERNATIONAL AFFAIRS

Pursuant to the special agreement signed January 27, 1909, between the United States and Great Britain, the State Department recently filed with the British embassy at Washington the United States government's case in the Newfoundland fisheries controversy, and the case of the British government was filed at London. Both cases were then submitted to the International Bureau at The Hague.

The first deputation of Chinese students to be sent to America in connection with the remission of the Boxer indemnity sailed from Shanghai on October 10th. These students, of which there are fifty, were chosen at competitive examinations recently held in Peking, and they will study in various American schools.

An interesting meeting between President Taft and President Porfirio Diaz, of Mexico, occurred on October 16th at El Paso, Texas, and at Juarez, Mexico. President Diaz first crossed the border to El Paso, Texas, where he was warmly welcomed by President Taft. The latter was accompanied by Secretary Dickinson and Postmaster-General Hitchcock, Captain Archibald Butt, General Albert Myer, U. S. A., Assistant Secretary W. W. Mishler, and C. C. Wagner, of the White House staff. President Diaz was accompanied by members of his Cabinet and military staff. Later the two Presidents withdrew for a private interview to the Chamber of Commerce building, attended only by Governor Creel, of Chihuahua, former ambassador to the United States,

as interpreter. Then President Taft crossed the Rio Grande to the Mexican city of Juarez, where he was made welcome by President Diaz, and in the evening entertained by him at an elaborate banquet. The silver and gold service of Emperor Maximilian was used at the dinner. In remembrance of the occasion, the two Presidents were presented with gold goblets by the city of El Paso. One result of the meeting was the declaration of neutrality over the El Chamizal territory, formed by the changing of the course of the Rio Grande river. The United States authorities had contended that this change was gradual and due to natural accretion from the American side, while the Mexicans contended that the change was due to an avulsion, and therefore the United States gained no additional territory by the shifting of the boundary line.

Charles R. Crane, of Chicago, who was recently appointed minister to China, was recalled, as he was about to embark from San Francisco for China, and his resignation requested, because of alleged indiscretions of speech in regard to the attitude of the United States government toward the recent agreements between China and Japan concerning Manchuria.

Something over forty commissioners representing commercial industry and educational life in Japan have recently made a tour of the United States for the purpose of becoming better acquainted with the people of the United States, and of studying their industries and commerce. The commission was headed by Baron

Eüchi Shibusawa, who has frequently been called the J. P. Morgan of Japan. Another member of the commission was Baron Kanda, professor in the Peers' College, Tokio, who received his education principally at the Amherst High School and Amherst College in this country. Many of the commissioners were accompanied by their wives.

Mr. Ransford S. Miller, former Japanese secretary of the American embassy at Tokio, has been made the head of the Bureau of Far Eastern Affairs, and Mr. E. T. Williams, former consul general at Tientsin, has been named as Mr. Miller's assistant.

William I. Buchanan, former American minister to the Argentine Republic and Panama, died suddenly on October 16th in the streets of London. Mr. Buchanan was born in Covington, Ohio, on September 10, 1853. When only eight years old he was left an orphan, and spent his boyhood on his grandfather's farm. He was educated in the country schools, and then obtained a post as clerk of the Indiana house of representatives. When about twenty-four years old, he went to Sioux City, Iowa, where he entered business as a merchant, and attracted attention by his skilful management of the Corn Palace Exposition, as a result of which he was called upon to represent his state at the World's Columbian Exposition at Chicago. In 1899 he was chosen director-general of the Pan-American Exposition at Buffalo. Mr. Buchanan was appointed United States minister to the Argentine Republic by President Cleveland, in 1894, and since that time has been almost continuously connected with the Department of State in some of its most important

diplomatic work. He had a masterly knowledge of the Spanish language, and thoroughly understood the Latin-American character. He was chosen as the deciding arbitrator in the special boundary commission at the time of the boundary dispute between the Argentine Republic and Chile. He also negotiated an extradition treaty between the Argentine Republic and the United States. Because of his intimate knowledge of the Latin-American character, he was selected by President Roosevelt as the first United States minister to Panama. He was a delegate to successive Pan-American conferences, and, in the latest conference at Rio, in 1906, was head of the American delegation. It was also through his efforts that the Central American court of arbitration was created at the Washington conference, and he was connected with the treaty negotiations between the United States, Colombia, and Panama. After the downfall of Castro, he was selected by the government to arrange to make agreements with the new Venezuelan government concerning the American claims, and at his death he was an agent for the government in the case to be arbitrated at The Hague between the United States and Venezuela.

Charles Denby, consul general from the United States to Shanghai, China, was recently transferred by President Taft to Vienna.

The arbitration agreement between Ecuador and the United States, signed at Washington by the Ecuadorean Minister and Secretary Root on January 7, 1909, and ratified by the United States Senate on January 11th, was ratified by Ecuador on November 2d.

### NOTES FROM OTHER NATIONS

Chang Hi Tung, grand councillor of China, died at Pekin on October 4th. Chang Hi Tung had been in the government service practically all his life, and

was formerly Viceroy of Shang Sha. He took a prominent part in the negotiations concerning the loan to China by foreign interests of \$30,000,000 for the construc-

tion of the Hankow-Sze-Chuen railroad, of which he was director general.

Cesare Lombroso, the noted Italian criminologist and alienist, died at Turin on October 19th, at the age of seventy-three.

Prince Hirobumi Ito, who was called the creator of the new Japan, was assassinated on October 26th, by a Korean, as he alighted from a special train at Harbin, Manchuria, whither he had gone from Tokio in his capacity as president of the Privy Council, in the hope, as he stated, of securing a better understanding with China in regard to Japan's intentions in Manchuria. The murderer seems to have been actuated by a desire to avenge the supposed wrongs to his country, and to gratify a private grudge against Prince Ito.

Prince Ito was born in 1840, of humble parents, but early in life became ambitious to familiarize himself with Western ideas and knowledge, and secretly left Japan for several years of study abroad. In 1867, during the war of the restoration in Japan, he enlisted in the ranks of the Imperialists. In the early '70s he was sent to America and Europe as a member of the Iwakura embassy, and subsequently became governor of Hiogo, from which position he was rapidly advanced to the highest post in the empire. He assisted in planning the constitutional monarchy in 1875, and became minister of the Home Department in 1878. He later held the offices of minister of public works and

president of the Legislative Assembly, and in 1882 was sent to Europe to study the various constitutional systems. In 1884 he was appointed minister of the imperial household, and, in the following year, was sent to Tientsin as special envoy to treat with Li Hung Chang as to the status of Korea. In 1886 he originated the system of responsible cabinets, and, when only forty-six years of age, became the first prime minister of Japan. A year later, in recognition of his services to the state, he was raised to the peerage. In 1889, after the framing of the Constitution, in which he had taken an active part, he was made president of the Privy Council, and in 1890, when the first parliament met, he was elected president of the House of Peers. During the war between China and Japan, in 1895, he was high admiral of the Japanese fleet, and won an overwhelming victory. He was one of the leaders in the negotiations of peace at the end of the war, and during the next ten years was twice prime minister. He also took an important part in the prosecution of the Russo-Japanese war, since which time he had had charge of Japanese affairs in Korea.

The recent execution in Spain of Francisco Ferrer because of his alleged participation in the Barcelona uprising has precipitated the resignation of the Conservative ministry, headed by Premier Maura. A new ministry has been formed, with Señor Moret, the Liberal leader, at its head.

## JUDGES AND LAWYERS

Armand Albrecht, a well-known attorney of St. Paul, Minnesota, died there on September 28th, at the age of forty-one. Mr. Albrecht was a member of the commission which drafted the present charter of St. Paul.

Louis L. Angell, for a time judge of the municipal court at Providence, Rhode

Island, died at Jamestown on October 20th, at the age of fifty-nine. Mr. Angell was especially interested in probate law and office practice, and was at one time judge of the probate court of Johnston.

Howard Lawrence Osgood died at his home in Rochester, New York, on No-

vember 3. Mr. Osgood was born in Flushing, Long Island, in October, 1855. He was educated at Phillips-Andover Academy and at Harvard University, and was a member of the Hasty Pudding Club. He studied law in the office of the late Judge Henry Selden, and was admitted to the bar in 1880. He was also for many years a member of the Rochester Historical Society, and was the author of several pamphlets on local history.

Judge J. W. Benedict, of Lexington, Nebraska, recently left there to take up his residence in Omaha. On the eve of his departure, several members of Reno Post G. A. R. called on him, and presented him with a gold-headed cane as a token of their regard.

Judge L. A. Bergeron died at his home in Calvert, Texas, on October 12th, in the sixty-seventh year of his age.

Robert Roberts Bishop, associate justice of the superior court of Massachusetts since 1888, died at his home in Newton on October 7th, at the age of seventy-five. Judge Bishop was state senator from 1878 to 1882, and for three years was president of the senate.

Frank Blake, of St. Louis, Missouri, at present pardon attorney, has been appointed state insurance commissioner, to succeed John Kennish resigned.

Mayor James S. Brown and his secretary, Bert P. Woodard, have formed a law partnership at Nashville, Tennessee.

William A. Brown, famous as a criminal lawyer, died at his residence in New Castle, Indiana, on October 18th, at the age of fifty-five. Mr. Brown had served two terms in the state legislature.

William Butler, for forty years United States judge for the eastern district of Pennsylvania, died at his home at Westchester on November 2d, at the age of eighty-seven.

Neville H. Castle was recently appointed assistant United States district

attorney for the second judicial division at Nome, Alaska.

William R. Chamberlain, for nearly thirty years a practising attorney in Chicago, died at his home there on October 6th, at the age of fifty-eight.

George B. Chamberlin, a Chicago attorney conducting a collection agency, was recently disbarred by the Illinois supreme court on charges on conduct unbecoming an attorney and embezzlement, made by the Chicago Bar Association.

Archibald Foote Clark, a member of the New York law firm of Gillette & Clark, died suddenly on October 16th, in the State Courts building, while waiting to make an argument in the supreme court.

James T. Coogan, an attorney of Stamford, Connecticut, died there on October 12th, at the age of thirty-nine.

Members of the bar of Corydon, Indiana, recently presented Judge C. Wayne Cook with a gold-headed cane, on his retirement from the bench, after serving for twelve years as judge of the third judicial circuit. Judge Cook's successor is his former law partner, William Ridley.

George A. Cooke, the new justice of the Illinois supreme court from the fourth district, was the guest of honor at a luncheon given by the Iroquois Club, of Chicago, on October 4th. Justice O. N. Carter and John S. Miller were among the guests and made speeches.

Francis Marcellus Cox, a prominent lawyer of Washington, District of Columbia, at one time internal revenue collector for the district of Maryland, died at his residence at Washington, on October 23d, at the age of fifty-nine. He served several years in the Maryland legislature, and was, for a number of years, editor of the Congressional Directory.

At a camp meeting conducted a short time since by a traveling Methodist re-

vivalist known as "Mother Barnes," Eli F. Cunningham, a Clayton, Missouri, attorney, renounced and denounced his profession, declaring that it is impossible to lead a Christian life and practise law. Furthermore, he said that he would refund, on demand, any fee which he had accepted as a lawyer, as he considered money taken for legal advice and service tainted. The reports say that it is his intention to become a nonsectarian preacher.

State Senator I. O. Curtiss and E. B. Harkin, of Aberdeen, South Dakota, have formed a law partnership.

Judge Charles W. Dale and Sidney G. Kusworm, of Dayton, Ohio, have formed a partnership for the practice of law, making a specialty of commercial and corporation law and probate practice.

W. E. Disney, assistant county attorney of Muskogee county, Oklahoma, has resigned to take up the practice of law in partnership with Joe LaHay.

Judge and Mrs. George W. Doane, pioneers of Omaha, Nebraska, celebrated their golden wedding anniversary on October 25. Judge Doane was district territorial attorney in 1858, and later became judge of the third judicial district.

The law firm of Douglass & Mengert, of Mansfield, Ohio, was recently dissolved and a new firm formed, to be known as Douglass & Robison, the junior member of the firm being ex-Mayor T. R. Robison.

Matthew S. Dudgeon, of Madison, Wisconsin, for the past three years consulting attorney in the Wisconsin free library commission's legislative reference department, has been elected secretary of the commission.

Judge J. A. Dupuy, a prominent jurist, and president of the Roanoke Bar Association, died in Washington on October 3d, at the age of fifty-five.

Benjamin F. Etter, the oldest member

of the Dauphin county, Pennsylvania bar, died at Harrisburg a short time since, at the age of eighty-five. Mr. Etter was the first deputy attorney general of Pennsylvania. At a special meeting of the Dauphin county bar to take action on Mr. Etter's death, eloquent tributes to his memory were uttered by prominent members of the bar.

Judge D. D. Evans, the oldest practitioner at the Danville, Illinois, bar, died on October 13th, in the eighty-first year of his age. Judge Evans had served two terms as county judge.

Judge H. F. Finley, former Congressman, died at Williamsburg, Kentucky, on October 16th, at the age of seventy-six. Judge Finley was, at one time, a member of the state senate, afterward serving as commonwealth's attorney, and then as circuit judge.

William Hubbell Fisher, an attorney of Cincinnati, Ohio, died suddenly on October 6th.

Judge A. S. Florence died at Monticello, Georgia, on October 5th, at the age of seventy-one. He served in the Confederate Army and lost his right arm at the second battle of Manassas.

Joseph S. Flynn, of Ridgeway, Pennsylvania, recently admitted to practice in the courts of New Hampshire, has formed a law partnership with William J. Starr, of Manchester.

Judge George Gary, who, in his varied career, has been a sailor, school teacher, clerk, politician, newspaper editor, and attorney, died at Milwaukee, on October 22d, after several years of failing health. Judge Gary was born at Potsdam, New York, March 16, 1824, and in 1850 came to Oshkosh, Wisconsin. He participated as a Whig stump speaker in the presidential campaign of 1852, and was twice a member of the state assembly. Judge Gary was, for a number of years, county judge of Winnebago county, resigning that office in 1882 to practise law. He is

the author of "Gary's Probate Law," published in 1879, and revised in 1892.

Charles S. Gaus, comptroller of the state of New York, died on October 31st at Huntington Lodge, on the preserve of the Bourbonnais-Kiamika Club, on Long lake, in the Laurentian mountains, Quebec, Canada. Mr. Gaus was in Canada on a hunting trip, and his death was due to a cold contracted during his journey, which resulted in pneumonia.

Walter J. Gibbons, for many years justice of the peace of Chicago, died there on October 22d, at the age of fifty. For twelve years he was president of the Catholic Total Abstinence Union of Illinois, and for several years had served as vice president of the Total Abstinence Union of America.

Richard Grant, of the law firm of Sullivan & Grant, of Duluth, Minnesota, has been appointed general solicitor for the big interests of the M. A. Hanna Company, in Cleveland.

Judges Howard Gray, Argus Cox, and J. P. Nixon, and their wives, were the guests of honor at a banquet tendered to the judges of the new Missouri court of appeals by the Greene County Bar Association, at the Colonial Hotel, Springfield, on October 4th. Senator Frank M. McDavid presided as toastmaster, and Frank S. Heffernan responded to the sentiment, "The Lawyer of the Past."

Ben. T. Hardin, of Kansas City, Missouri, has resigned his position as attorney for the Metropolitan Street Railway Company, and formed a law partnership with Ed. E. Aleshire and S. S. Gundlach, with offices in the Scarritt building.

Judge Drury A. Hinton, for twelve years a member of the Virginia supreme court of appeals, died at his residence in Petersburg on October 19th, at the age of seventy. For several years Judge Hinton was commonwealth's attorney for Petersburg.

Judge Marion M. Hope, for many

years an esteemed member of the Hamilton county, Tennessee, court, and at one time judge of the city court at Chattanooga, died there on September 5th in the sixty-first year of his age.

Henry Martyn Hoyt was recently appointed to the position of counselor to the department of state. Mr. Hoyt is a son of ex-Governor Hoyt of Pennsylvania. He graduated from Yale in the class of 1878; was admitted to the practice of law at Pittsburg, and later practised in Philadelphia. Since 1903, until the beginning of the present administration, he had been United States solicitor general.

The law firm of Hubbard & Burgess, of Sioux City, Iowa, was recently dissolved by the retirement from the firm of Congressman E. H. Hubbard.

Isaac Franklin Jones, one of the oldest and most widely known attorneys of northern West Virginia, died at his home at Elm Grove, on October 16th, at the age of seventy-one.

Edmund Kelly, a noted lawyer, who, for many years, had devoted his wealth, time and talents to the solution of social problems, died at his home on North mountain, at Nyack-on-the-Hudson, New York, on October 4th. Mr. Kelly graduated from Columbia College in 1870, then went to England and studied at Cambridge, and later graduated from the School of Law of Paris. He was an authority on international law, and was at one time counselor for the United States embassy at Paris.

Judge William L. Kiley, county judge and surrogate of Warren county, New York died at Glens Falls on October 24th, at the age of thirty-nine.

The interest of the late E. B. Kruttschnitt in the law firm of Farrar, Jonas, Kruttschnitt, & Goldberg, of New Orleans, having been liquidated, the firm has taken in two new members, Mr. Richard F. Goldsborough and Mr. Edgar H. Farrar, Jr., and will hereafter be

styled Farrar, Jonas, Goldsborough, & Goldberg.

Judge William Lindsay, formerly United States senator from Kentucky, died at his home in Frankfort on October 15th, at the age of seventy-four. For several years Judge Lindsay was chief justice of the Kentucky court of appeals. Later he practised law in New York city for some time as a member of the firm of Lindsay, Kalish, & Palmer. Judge Lindsay was one of the giants who went down in the free silver fight of 1896, and was retired from a successful political career of a quarter of a century because he believed that sound money was essential to the continued prosperity of the nation.

Charles Clarence Linthicum, professor of patent law in Northwestern University Law School, and member of the Chicago law firm of Linthicum, Belt, & Fuller, has been appointed general patent counsel for the United States Steel corporation, to succeed the late Thomas W. Bakewell.

D. Frank Lloyd, of New York, was recently appointed assistant attorney general of the customs court of appeals, created by the new tariff law, which provides that the court shall consist of a presiding judge and four associate judges, appointive by the President. The duties of the officers of this court are to represent the interests of the government in all matters of reappraisement and classification of imported goods, and in all incidental litigation.

Patrick Henry McCarren, state senator and Democratic leader of Brooklyn, New York, died on October 23d, at the age of sixty.

John B. McClymon, said to be the oldest lawyer in the country, celebrated his one hundred and first birthday on October 7th, at Pleasant Ridge, Ohio. He was born in Cherry Valley, New York, and went to Ohio in 1840.

Hon. H. J. McLaurin, a prominent lawyer of the Mississippi delta, residing at Rolling Fork, Mississippi, died sud-

denly of apoplexy on October 12th. Mr. McLaurin had served several terms with distinction in both houses of the Mississippi legislature. He was a brother of United States Senator A. J. McLaurin, of Brandon, Mississippi.

Judge James Cameron MacRae, dean of the law school of the University of North Carolina, died suddenly at his home in Chapel Hill, on October 17th, at the age of seventy-one.

Judge John W. Maddox, of Rome, Georgia, was recently appointed judge of the Rome judicial circuit, a position which he had previously occupied from 1887 to 1892. Judge Maddox succeeds Judge Mose Wright, who resigned a short time since.

Rufus E. Meyers, ex-district attorney of Somerset county, Pennsylvania, and Miss Lillian Stoy, of Somerset, were married at the home of the bride on Wednesday evening, September 29. After a wedding supper, Mr. and Mrs. Meyers left for Washington, District of Columbia.

The Allegheny County Bar Association, assisted by the leaders of the bars of the various western Pennsylvania counties, recently gave a farewell banquet at the Fort Pitt Hotel, Pittsburg, to the retiring Chief Justice of the Pennsylvania supreme court, Hon. James Tindale Mitchell, who, the first of next January, will have served twenty-one years on the supreme court bench. D. T. Watson, the most distinguished member of the Allegheny county bar, acted as toastmaster.

Charles H. Moore, at one time a prominent attorney of San Francisco, and for several years a member of the law firm of Cobb & Moore, was recently declared legally dead by Superior Court Judge Graham. Mr. Moore went to Europe in 1901, and when last heard from was in Paris. Letters of administration were granted to the widow, Mrs. Albina Moore, to enable her to collect a \$5,000 life insurance policy.

John P. Mullin, an attorney of Bradford, Pennsylvania, died there a short time since.

Robert B. Murray, a well-known attorney of Youngstown, Ohio, died suddenly at his home there on October 24th, at the age of sixty-six.

Robert F. Murray, who was recently appointed as attorney for the poor in Delaware county, Indiana, and Claude C. Ball, have formed a law partnership at Muncie.

Charlton G. Ogburn, Cam D. Dorsey, and Charles B. Shelton have formed a partnership for the practice of law at Atlanta, Georgia.

General Alfred Orendorff, president of the Illinois State Historical Society, and formerly president of the Illinois State Bar Association, died at his residence in Springfield on October 22d, at the age of sixty-four.

General Elwell Stephen Otis, U. S. A., died at his home in Rochester, New York, on October 21st, at the age of seventy-one. General Otis was the son of William and Mary Otis, and early in life came to Rochester, and was educated in the city's public schools. In 1858 he was graduated from the University of Rochester, with the degree of bachelor of arts, which he supplemented two years later by gaining the degree of bachelor of law at Harvard Law School. Mr. Otis practised law a little longer than one year; for, in September, 1862, he was mustered into the United States service as captain of Company D, 140th New York Volunteer Infantry, commanded by Colonel Ryan, who was killed in the battle of the Wilderness, with 355 of his subordinate officers and enlisted men. Captain Otis was promoted to the command of the depleted regiment. On June 24th, 1865, General Otis was mustered out of the volunteer army and returned to the home of his father, in Gates, to resume his law practice. But he soon after became attached to the regular army, from which service he was re-

tired as major general on March 25, 1902, having reached the age of sixty-four years.

Walter C. Parker, a Chicago lawyer, was disbarred from practice in the courts of Illinois a short time since, because of an alleged misappropriation of \$1,500 turned over to him by certain heirs.

Frank M. Parsons, prosecuting attorney of Morgan county, Ohio, committed suicide on October 3d, by shooting himself in his office in the courthouse at McConnellsville.

Lewis E. Payson, for several years representative in Congress from the ninth Illinois district, and for eleven years a judge in Illinois, died in Washington, District of Columbia, on October 4th, at the age of sixty-eight.

Colonel R. H. Pearson, for many years city attorney of Birmingham, Alabama, and at one time assistant prosecuting attorney for the circuit court, died at his residence in Birmingham, on October 16th, at the age of sixty-one.

John Prentiss Poe, a distinguished Maryland lawyer, at one time attorney general of the state, died on October 14th, at Ruxton. Mr. Poe was dean of the law department of the University of Maryland, professor of law, and secretary of the board of regents. At a special session of the regents of the university, a memorial minute was placed on the record, expressing deep sorrow over the death of Mr. Poe.

Frederick Powell, an attorney of Washington, Kansas, died at his home there on October 4th, in the forty-eighth year of his age.

John S. Reynolds, librarian of the South Carolina supreme court, died at the Columbia city hospital on October 25th, after a short illness. The deceased was a man of letters, and will be remembered by his permanent contribution to the literature of the state, the "History of Reconstruction in South Carolina."

which is used as a text-book in the department of history in the university. He also prepared a digest of reports and opinions from the state supreme court. Mr. Reynolds engaged in journalism shortly after his admission to the bar, and was connected at different times with the *Winnsboro News and Herald*, and in Columbia with the *Record*, the *Register*, and the *State*.

Raymond Rice was recently admitted to the law firm of Barker & Means, of Lawrence, Kansas, and the firm name will now be Barker, Means, & Rice.

James Calvin Sawyer, a member of the law firm of Lamb, Beasley, & Sawyer, and an able criminal lawyer, died at his home in Terra Haute, Indiana, on October 12th, at the age of sixty-one.

John Cornell Schenck, a retired lawyer, and descendant of one of the first Dutch settlers on Long Island, died at his home in Brooklyn, New York, on September 29th, at the age of seventy-two. Mr. Schenck was at one time associate judge of the court of common pleas of King's county.

Ellison G. Smith, for many years circuit judge of the first circuit district of South Dakota, has been appointed judge of the supreme court of the state.

J. Warren Tryon, for many years a well-known member of the Berks county, Pennsylvania, bar, died at his home in Germantown, a short time since at the age of sixty-seven years.

Hugh K. Wagner, a prominent attorney of St. Louis, was elected president of the Young Men's Republican Auxiliary organization at its September meeting. Mr. Wagner is a member of the St. Louis, Missouri, and American Bar Associations, and has for many years been a lecturer at the Benton College of Law.

The common pleas judges of the fourth judicial district of Ohio held their first annual banquet at the Colonial Hotel, Cleveland, on October 16th. Judge R.

M. Wanamaker, of Akron, was re-elected presiding judge.

The Hancock County, Maine, Bar Association recently held memorial exercises at the courthouse in Ellsworth, in memory of George M. Warren, who died at his home in Castine on July 24, 1909, in the sixtieth year of his age. Addresses were made by E. P. Spofford, John A. Peters, and John B. Redman.

Judge Oscar M. Welborn, of Princeton, Indiana, the oldest jurist in the state in point of service, recently retired after completing thirty-six years of service on the circuit bench. His successor is Judge Herdis Clements, of Mount Vernon.

W. Mosby Williams, a distinguished lawyer of Washington, District of Columbia, died there on October 1st, at the age of forty. Mr. Williams had been president of the Virginia Democratic association of the district for several terms.

On October 16th there was dedicated at Indianapolis, Indiana, a public monument or drinking fountain erected in honor of the memory of Nathan Morris, who lost his life on Easter Sunday, 1903, in attempting to save the lives of several persons in a burning dwelling. The fountain was erected with contributions made by members of the bar outside of Indianapolis, men who had watched Mr. Morris's career and learned to love him for his self-sacrificing and unassuming character, as well as for his great pride in civic affairs. Henry Wollman, of New York city, who started the movement for the erection of the memorial, made the presentation speech. He said in part:

"Nathan Morris was a lawyer whose greatest victories were in quieting the din and roar of the angry strife of quarrel. He was the best type of the modern lawyer, who believes that 'peace hath her victories no less renowned than war.' . . . Wherever it was possible, he brought peace where passion reigned before. And that is the lesson of his career as a lawyer. At the time of his

death he occupied the highest position that a lawyer who is not a member of the judiciary can fill; he was president of the Bar Association of his own city, which means that his colleagues at the bar, the men who knew him best, recog-

nized in the most fitting way that he had lived up to the highest ideals of his profession, and had been true and faithful to every trust that had been reposed in him."

## NEW OR PROPOSED LEGISLATION

A bill changing the present law in Kentucky concerning bribery has been prepared by Assistant Attorney General T. L. Blakey, to be introduced in the next legislature by Senator A. R. Burnam. The bill is aimed at election bribers, and intended to prevent the use of money at elections, and provides that the voter who receives the bribe "shall be guilty of no offense, and no prosecution shall be instituted against him, but said voter shall be a competent witness against the party or parties" offering the bribe. Under the present law, the bribe taker is equally guilty with the bribe giver, and, being *particeps criminis*, is not a competent witness against the man who gave the bribe.

A new charter was adopted recently by St. Joseph, Missouri, by popular vote, after an exciting campaign. The change in the form of its municipal government is a compromise between the prevailing methods and the commission plan, devised in Galveston, and copied by a few other cities in different parts of the country. Some of the leading features of the charter are as follows:

It abolishes the old council composed of ward representatives, and establishes a council of five members, elected at large.

Increases the power of the mayor, and places the burden of responsibility for the public service directly upon him.

Makes the mayor the executive head of the city, and limits the council entirely to legislative duties.

Limits the granting of franchises to twenty-five-year terms.

Provides for the referendum of franchises on petition of 25 per cent of the voters; also provides for the recall and the initiative.

Establishes a public utilities commission under a section drafted from the Hughes law in New York.

Adopts the Kansas City park and boulevard plan.

Adopts the Omaha viaduct law.

The mayor appoints the heads of departments, and specific responsibility is established in each department. The council may, however, refuse to confirm the mayor's appointees, but the council's objection to any appointee must be made in writing, and be based on the fitness and qualifications of the nominee.

The commission form of government has also become very popular in Kansas, and the prospects are that Kansas will be thoroughly commissionized in another year.

## BAR ASSOCIATIONS

The annual meeting of the Fitchburg, Massachusetts, Bar Association was held on October 9th, and the following officers

were elected for the coming term: President, Judge Charles H. Blood; secretary-treasurer, Alvah M. Levy; ex-

ecutive committee, Charles A. Babbitt, Thomas L. Walsh, and J. Ward Healey.

The Illinois State Bar Association tendered a banquet to the judges of the supreme court of Illinois on October 30th, at the Hotel La Salle, Chicago. Edgar A. Bancroft, president of the bar association, acted as toastmaster. Among the speakers were Chief Justice William Farmer; Judge Francis E. Baker, of the United States circuit court of appeals; Justices James H. Cartwright and George A. Cooke, of the supreme court, and William J. Calhoun.

At a recent meeting of the Greene county, Missouri, Bar Association at Springfield, John Schmook was elected president, to succeed T. J. Murray, resigned, and O. E. Gorman was elected secretary, to succeed Harry D. Durst.

The Marathon County, Wisconsin, Bar Association held a meeting a short time since to revive and reorganize the association, at which the following officers were elected: President, C. B. Bird; vice president, F. E. Bump; secretary, W. M. Sweet; treasurer, Frank Regner.

The thirtieth annual report of the Ohio State Bar Association was recently sent out by Edward B. McCarter, secretary of the association.

At a recent meeting of the Richmond, Virginia, Bar Association, George Bryan offered the following resolution looking to a more ethical method of filling the city judgeships:

"Resolved, That it is the sense of the bar association of the city of Richmond that hereafter when there shall be vacancies in any of the city judgeships, as to the filling of which the proper electing or appointing power may be guided by the wishes of the bar of the city, those who aspire to the office will commend themselves to the favor of the profession by the simple announcement of their candidacy, and by abstaining from efforts to secure pledges of support from members of the bar.

"Resolved, That it is also the sense of the association that the best results will be obtained if members of the bar, under such conditions, shall refrain from committing themselves to any candidate."

Since there was no time to consider the matter then, it was left for the next meeting.

President William H. White addressed the members, and Tinsley Coleman, of the Lynchburg bar, also spoke briefly. Arthur G. Patton, of the New York bar, and Judge Erskine Ross, of the California bench, were guests of the association.

## LAW SCHOOLS

The Jefferson School of Law, in Kentucky, opened its sixth year on October 1st, with a large attendance. Edward L. McDonald has been added to the faculty, to take charge of the department of real property. The other members of the faculty are Judge Shackelford Miller, dean; Judge Thomas R. Gordon, Benjamin F. Washer, Norton L. Goldsmith, and Elliott K. Pennebaker.

The Atlanta Law School, Georgia, opened on September 30th with a lecture by Justice Marcus W. Beck, on "The Rewards of the Study of Law." One of the features of the school is the practice court, which gives actual experience in

the commencement and trial of cases throughout all their stages. The faculty is composed of the following instructors:

Hamilton Douglas, Ph. M., LL.B., dean, professor elementary law, wills, and contracts.

Hooper Alexander, A.B., professor of constitutional law, corporations, bailments, and criminal law.

Victor L. Smith, Ph.B., LL.B., professor of pleading and practice and commercial law.

E. Marvin Underwood, A.B., LL.B., professor of evidence, torts, equity jurisprudence, and agency.

Charles D. McKinney, A.B., B. Lit.,

LL.B., professor of realty, sales, and domestic relations.

Charles B. Reynolds, A.B., LL.B., professor directing school of practice.

Edward P. Burns, A.B., LL.B., secretary, professor of mathematics, of annuities, and insurance.

Dean H. B. Hutchins, of the law department of the University of Michigan, has been appointed acting president of the university pending the appointment of a permanent successor to President James B. Angell, who recently retired, after serving for thirty-eight years.

The law department of the University of Memphis recently opened its first term with a lecture by Hon. S. Walter Jones on "Corporation Law."

Judge John D. Lawson, dean of the law school of the University of Missouri, who was appointed by the American Institute of Criminal Law and Criminology to make an investigation of the administration of criminal law in Europe, will sail about Christmas time for England, France, and the Orient, returning in September, 1910. Judge Lawson was granted a leave of absence by the executive committee of the board of curators, and E. W. Hinton will act as dean during his absence.

The law students of Notre Dame University recently gave a banquet in honor of Colonel William Hoynes, the dean of the law school since its institution, over twenty-five years ago, on the occasion of his return to the school after a year's vacation. James E. Deery, president of the senior law class, spoke on the topic, "For the Classes," and Leo F. Buckley, president of the junior class, spoke "For the Junior Class." Profes-

sor G. A. Farabaugh was toastmaster, and speeches were made by Paul J. Donovan, Otto A. Schmidt, and George Sands.

Three members have been recently added to the faculty of the College of Law of Syracuse University: Municipal Judge Ryan, who will take charge of the course in practice; Municipal Judge William G. Cady, who will teach suretyship; and Howard V. Rulison, instructor in elementary law, who will take the course formerly given by George McGowan.

A permanent organization of the students of the San Francisco Law School was recently formed, and articles of incorporation filed in the office of the county clerk. The incorporators were Arthur S. Gram, Chester A. Pinkham, William B. Acton, Harry G. Parker, Chester W. Strawbridge, William T. Eckhoff, and W. B. Barry.

A series of lectures by Curtis H. Lindley, president of the San Francisco Bar Association, to the law students of the principal law colleges and the members of the bar association, was opened on October 15th in the rooms occupied by the association. This is said to be the first step of prominent members of the San Francisco bar to form a Junior Students' Bar Association. The senior students of the University of California, Leland Stanford, Jr., University, and Hastings College of Law have been invited to attend the lectures. Judge Lindley will take up the subjects of public lands, embracing water, irrigation, and mining laws, and leading up to the conservation of natural resources. It is expected that other prominent members of the profession will take up the work when Judge Lindley has completed the series.

### NEW LAW BOOKS

"Hand Book of Mexican Law." By Robert Joseph Kerr. (Chicago Pan-American Law Book Company). \$3.50.

In this volume Mr. Kerr has produced a work which was much needed by per-

sons connected with the growing trade in Mexico. He has prepared an abridgement of the Constitution, Civil and Commercial Codes, mining law, and stamp laws. He has preserved the order of

chapter and section found in the original law, and has abridged it so as to present the matters which he thought most important to the American lawyer. Some of the more important laws, however, have been incorporated in full. The book presents in compact form the laws a knowledge of which is most needed by those attempting to do business in that country.

"Law of Unfair Business Competition." By Harry D. Nims. (New York: Baker, Voorhis, & Co.) 1 vol. \$6.50.

Mr. Nims has produced a very full treatise on all matters dealing with unfair business competition, including trademarks, tradenames, trade secrets, confidential business relations, unfair interference with contracts, libel and slander of merchandise, business credit and reputation. The cases represented are from the English and American courts, and one to whom any problem of the legality of business competition is presented can find in this book all the ammunition necessary to enable him to determine whether the competition is lawful or otherwise.

"Classics of the Bar." By Alvin V. Sellers. (Baxley, Georgia: Classic Publishing Company), \$2.

In this little volume, Mr. Sellers has gathered together some of the most famous speeches which have been made in trials in American courts. Among the trials represented are those of Mr. Beecher, Mr. Haywood, Mr. Durrant, and Mr. Thaw. And among the counsel represented are Mr. Darrow, Mr. Borah, Mr. Delmas, and Mr. Voorhees. In addition to this is quite a collection of eloquent perorations taken from the arguments of famous counsel to the jury in more or less noted cases, among which is one by Robert G. Ingersoll in the First Star Route trial. The whole volume presents a feast of eloquence from which the reader may secure not only great pleasure, but much profit.

"Evolution of Law." By Henry W. Scott, 3d ed. (New York: The Borden Press Publishing Co.) Buckram, \$3; Morocco, \$4.

In this interesting little book, Judge Scott traces the evolution of law from the

primitive times to the written constitution. He begins with a man who was a law unto himself and enforced his rights by his might, and proceeds through patriarchal and theocratic forms down to the establishment of a tribe and the hereditary ruler, and finally to the time when the people were able to govern themselves through representatives. In doing this, he develops the law of Egypt, of the Israelites, of China, Greece, Rome, England, and France. To one wishing to secure a comprehensive grasp upon the development of law, with a small outlay of time, this volume is to be commended.

"Courts of the State of New York." By Henry W. Scott. (New York: Wilson Publishing Co.) Buckram, \$5; Morocco, \$6.

In this volume, Judge Scott has traced the history and development of the New York courts from the settlement of Manhattan island to the present time. He has carefully described the courts of the Dutch *régime* as well as their jurisdiction, and shown how they were superseded by the English courts upon the change of sovereignty. He develops the English courts from the time of transition, including a notice of the establishment of the courts of the various cities of the state. The whole is a very interesting and valuable contribution to legal literature, and contains much information not readily attainable elsewhere.

"Landlord and Tenant." By Herbert T. Tiffany. 2 vols. \$13.

"The Fixed Law of Patents." As established by the Supreme Court of the United States and the nine circuit courts of appeals. By William Macomber. 1 vol. Law canvas, \$7.50.

Steele on "Agency." (For students.) Buckram, \$3.

"Practical Suggestions for Drawing Wills and the Settlement of Estates in Pennsylvania." By John Marshal Gest, Buckram, \$2.

"The Rules against Perpetuities, Restraints on Alienation, and Restraints on Enjoyment." (Pennsylvania.) By Roland R. Foulke. 1 vol. Law buckram, \$5.

Sullivan's "American Business Law." With legal forms. Cloth, \$1.25.

Chambers' "Constitutional History of England." Cloth, \$1.40.

"The Digest of Justinian." Translated by Charles Henry Monro. Vol. II. Containing Books VII. to XV. \$4.

"International Incidents for Discussion

in Conversation Classes." By L. Oppenheim. \$1.

"Equity: Also the Forms of Action at Common Law." Two courses of lectures by F. W. Maitland. Edited by A. H. Chaytor. \$4.

## RECENT ARTICLES IN LAW JOURNALS & REVIEWS

"Liability for Damage to Real Property Caused by Building or Excavating on Adjoining Property, with Particular Reference to the Construction of the Sewerage System of Baltimore."—42 Chicago Legal News, 88, 93.

"The Treaty Power and Its Relation to State Laws."—43 American Law Review, 641.

"Capital Punishment."—43 American Law Review, 667.

"The Federal Attorney-Generalship."—43 American Law Review, 685.

"Race Distinctions in American Law."—43 American Law Review, 695.

"The Companies (Consolidation) Act, 1908."—25 Law Quarterly Review, 348.

"The Summary Process to Punish Contempt. II."—25 Law Quarterly Review, 354.

"Enemy Character after the Declaration of London."—25 Law Quarterly Review, 372.

"The Rule in *Whitby v. Mitchell*. (Estate to Unborn Person for Life, Followed by Estate to Child of Such Unborn Person.)—25 Law Quarterly Review, 385.

"The Origin of the Attorney General."—25 Law Quarterly Review, 400.

"Contracts by Telegraph."—45 Canada Law Journal, 617.

"The Devolution of Estates Act and Real Assets."—45 Canada Law Journal, 621.

"Protection of Children."—45 Canada Law Journal, 625.

"Capital Punishment."—45 Canada Law Journal, 628.

"The Constitutional Power and Relation of the State and Federal Courts."—42 Chicago Legal News, 63.

"Commutation of Death Sentence."—2 Lawyer and Banker, 135.

"Pure Food and Drink."—2 Lawyer and Banker, 142.

"The Law's Delay."—2 Lawyer and Banker, 156.

"Impairment of the Obligation of Contract by State Judicial Decisions."—4 Illinois Law Review, 155.

"Judge Gilbert and Illinois Pleading Reform."—4 Illinois Law Review, 174.

"Death Sentences in Germany."—21 Green Bag, 433.

"Professional Idealism."—21 Green Bag, 436.

"Can a Labor Union Compel Its Members to Strike?"—21 Green Bag, 445.

"The Negotiable Instruments Law."—26 Banking Law Journal, 651, 733.

"Legal Characteristics of Japanese Business Associations. Part I."—58 University of Pennsylvania Law Review, 1.

"Mutuality of Obligation and Remedy as a Requisite to Equitable Relief, with Special Reference to Oil and Gas Leases."—58 University of Pennsylvania Law Review, 16.

"Some Recent Sanitation Cases."—73 Justice of the Peace, 513.

"Remands."—73 Justice of the Peace, 515.

"Receivers Suing in Foreign Jurisdictions. I. Those Cases in Which the Determining Feature is the Kind of Receiver."—69 Central Law Journal, 317.

"Ex-Justice Brown's Views on Divorce."—13 Law Notes, 125.

"Constructive Murder and Felonious Intent."—10 Criminal Law Journal of India, 1.

"The Criminal and Law Reform."—10 Criminal Law Journal of India, 8.

"Origin and Basis of the Rule That, in Determining Riparian Rights, the United States Courts Follow the Decisions of the Supreme Court of the State in Which the Controversy Arises."—69 Central Law Journal, 262.

"The Right to Shoot an Escaping Criminal."—45 Canada Law Journal, 577.

"May a Court Compel the Violation of an Injunction?"—69 Central Law Journal, 280.

"Application under Seal for Shares in Companies. (Right to Revoke.)"—29 Canadian Law Times, 921.

"The Jurisdiction of the Parliament of Canada in Regard to the Prevention and Settlement of Labor Strikes."—29 Canadian Law Times, 929.

"Rectification of Deeds."—29 Canadian Law Times, 946.

"The Remedies of a Mortgagor in Possession."—29 Canadian Law Times, 949.

"The Powers of Directors."—29 Canadian Law Times, 952.

"Federal Employers' Liability Act."—69 Central Law Journal, 297.

"Education Authorities and Their Liability for Accidents to Children."—73 Justice of the Peace, 501.

"Proof of Ancient Highway."—73 Justice of the Peace, 503.

"Municipal Government."—39 National Corporation Reporter, 253.

"Disbarment for Criticizing a Judge Who Is a Candidate for Re-Election."—39 National Corporation Reporter, 285.

## THE HUMOROUS SIDE

GIVES HIMSELF A GOOD RECOMMEND.  
—A letter head of an ambitious Texas lawyer which has been sent us several times by some of his brethren in that state is, with the omission of names, as follows:

### Office of

— The Lawyer — The Real Estate Man  
Hon. — — —, L.L.B., U. of T. '03.

Practice in all Courts.

No trouble to answer legal questions  
regarding Texas Laws.

Motto:—"ACTION, NOT AIR."

Not a collecting agency except under special contract.

Licensed conveyancer of Real Estate.  
———, Texas,

One of our correspondents, who sends it, states that he is reminded of the reply of a colored man coming away from a political speech. When asked who was speaking, he said: "Jedge, I don' know who he air. But he is shore giving hissef a powful good riccommend."

WANTED TO SEE THE LIVING PICTURES.  
—A lawyer moving to a new territory,

who possessed, besides his qualifications as a lawyer, considerable ability as an elocutionist, desiring to make himself acquainted with the public as well as to increase his bank account during the time of waiting for a practice to develop, made an itinerary of the country as an elocutionist. His advertising matter was generously scattered about, and, among other things, his handbills announced "Living Pictures of Wit and Oratory from the Greatest Masters," the words "living pictures" being displayed in bold type and the other words in smaller letters. After his address at one place, and immediately upon its close, a number of rough frontiersmen of the cowboy type accosted him and demanded where "them living pictures" were. He endeavored to explain that the words "living pictures" in his advertisement were used metaphorically, but he was unable to satisfy the audience, and they insisted that, if he could not show the living pictures, he must refund the price of admission, which he was finally obliged to do.

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